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Paper No. ____

ANTONELLI TERRY STOUT & KRAUS
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VIRGINIA 22209

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MAY 22 2001

In re Application of
Hisataka Sugiyama et al
Application No. 08/427,866
Filed: April 26, 1995
Attorney Docket No. 500.31617CX1

**OFFICE OF PETITIONS
A/C PATENTS**

AND

DECISION ON PETITION

In re Application of
Hisataka Sugiyama et al
Application No. 08/464,461
Filed: June 5, 1995
Attorney Docket No. 500.31617CX2
Now Patent No. 5,614,938
Issue Date: March 25, 1997

The above-identified files are before this office to consider the petition filed June 6, 2000, in Application No. 08/427,866 requesting withdrawal of the erroneous holding of abandonment.

The petition is **granted**.

A review of the file history of Application No. 08/427,866 indicates that this application was filed on April 26, 1999 as a 37 CFR 1.60 continuation application of Application No. 07/958,162 (now Patent No. 5,414,451, which issued on May 9, 1995), containing claims 1 through 12.

On June 5, 1995, a request for filing a continuation application under 37 CFR 1.60, along with a copy of the specification, claims and drawings, of Application No. 08/427,866, was filed. The continuation papers filed on June 5, 1995 were assigned Application No. 08/464,461 and apparently were processed as a filewrapper continuation application under 37 CFR 1.62 of Application No. 08/427,866. Thereafter, a nonfinal Office action was mailed on March 12, 1996 and, on June 12, 1996, an amendment was filed canceling claims 1 through 12 and adding claims 13 through 17 (which were later renumbered as claims 1 through 5 (which are the same claims as now appears in the issued patent). A Notice of Allowance and a Notice of Allowability were mailed on September 17, 1996. In reply, the issue fee was paid on December 13, 1996, and Application No. 08/464,461 subsequently issued as Patent No. 5,614,938 on March 25, 1997.

Unfortunately, the Group, now Technology Center, apparently processed the 37 CFR 1.60 application papers filed on June 5, 1995 as an application filed pursuant to the provisions of 37 CFR 1.62; hence the PALM records at the USPTO indicating that the '866 application is abandoned. As noted above, however, the transmittal letter for the application papers filed on June 7, 1995, were clearly marked as having been filed under the provisions of former 37 CFR 1.60, as a continuation (and copy) of application No. 08/427,866 which did not require the abandonment of the parent application as a condition of obtaining a filing date. Any indication of abandonment of the '866 application is manifestly in error, is hereby *vacated*, and as indicated, *infra*, will be corrected by the Technology Center.

It is noted that while application No. 08/464,461 was filed June 5, 1995, the specification therein and one transmittal letter therein are date stamped April 26, 1995. It is also noted that the specification in application No. 08/427,866, filed April 26, 1995, is date stamped filed June 6, 1995, and the transmittal letter filed June 6, 1995, is also placed in that file. It appears that the Group, now Technology Center, inadvertently switched the earlier filed papers for application No. 08/427,866 into the later filed application No. 08/464,461, and *vice versa*. Nevertheless, such is immaterial, as each specification is, ultimately, pursuant to 37 CFR 1.60, a copy of the parent application No. 07/958,162 filed October 8, 1992. Accordingly, to minimize confusion and disruption of the contents of a patented file, the specifications and transmittal letters, notwithstanding the dates stamped thereon and the filing dates accorded to each respective application, will each remain in the file wrapper in which they currently reside.

Application No. 08/464,461 (now U.S. 5,614,938) is being forwarded to the Files Repository.

Application No. 08/427,866 is being forwarded to Technology Center AU 2853 for correction of PALM records to show that this application is pending; is not the parent of a file wrapper continuation application; and examination on the merits.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-1820.

A handwritten signature in black ink, appearing to read "Brian Hearn", written in a cursive style.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy